PP v. RAMAYAH RAMALU & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
AZIAH ALI FCJ
AHMADI ASNAWI JCA
ZAMANI A RAHIM JCA
[CRIMINAL APPEALS NO: A-05-233-08-2014 & A-05-279-10-2014]
7 JUNE 2016

CRIMINAL LAW: *Penal Code – Section 302 – Murder – Fatal stab wounds inflicted on deceased – Whether accidental – Whether injury on deceased sufficient in ordinary course of nature to cause death – Whether intention to cause death could be established from seriousness of injuries and manner in which injuries were caused – Whether defence mere afterthought*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Appeal by prosecution – Original charge under s. 302 Penal Code reduced to 304(a) of Penal Code – Fatal stab wounds inflicted on deceased – Defence of accidental and unintentional – Whether trial judge erred in accepting defence – Whether intention to cause death could be established from seriousness of injuries and manner in which injuries were caused – Whether defence mere afterthought – Whether defence raised reasonable doubt on original charge*

PW5 received a telephone call of a fight in front of one Kalarani's ('deceased') house. At the scene, PW5 saw the second respondent having a parang with him. Then, PW5 saw the deceased running to prevent the parang held by second respondent from hitting someone but the deceased was stabbed in the chest by the second respondent. At the same time, SP5 saw the first respondent approaching the deceased and further thrusting the parang onto the deceased's chest. The first respondent then pulled the said parang out of the deceased's chest and swung the same at PW5. The parang hit and injured PW5's right thumb. The deceased succumbed to her injuries. The pathologist ('SP8') confirmed that the cause of the deceased's death was due to stab wound to the chest severing the major thoracic organs. The first respondent was initially charged under s. 324 of the Penal Code ('PC') for causing hurt to PW5 while the second respondent was charged under s. 302 of the PC for causing death to the deceased. At the time of the commission of the offence, the second respondent was 16 years and four months old. At the end of the prosecution's case, the first respondent was levelled with a second charge under s. 302 of the PC for causing death to the deceased, read together with s. 34 of the PC. The charge against the second respondent was correspondingly amended to provide for the insertion of s. 34 of the PC to run in tandem with the second charge against the first respondent. The trial judge found that the prosecution had established a *prima facie* case against the respondents on the charges proffered and ordered the respondents to enter their defence upon their respective charges. The second respondent, in his defence contended that he did not intend to stab the deceased but had slipped

A and lost his balance during the fight, and in the process, had unintentionally/accidentally stabbed the deceased on her chest. The second respondent added that there were more than 20 people involved in the fight. The second respondent also averred that the first respondent was not at the scene of the fight when the deceased was accidentally stabbed. At the end of the defence's B case, the first respondent was acquitted and discharged of both the charges levelled against him. Meanwhile, the second respondent was found guilty and convicted on a lesser charge under s. 304(b) of the PC and was sentenced to six years imprisonment. Hence, the prosecution filed separate appeals against the said decision. The Deputy Public Prosecutor ('DPP') submitted C that (i) the defence's version that more than 20 people were involved in the fight was not put or raised to any of the witnesses during the prosecution's case; (ii) the second respondent's defence that he did not intend to stab the deceased but had slipped and lost his balance and had accidentally stabbed the deceased was not put, *inter alia*, to the prosecution witnesses, in particular PW5; (iii) the defence of the first respondent that he was not at the scene at D the time the deceased was stabbed and was not involved in the injury sustained by PW5 was contradicted by his own police reports; and (iv) the defence of both respondents were mere afterthought and bare denials.

Held (allowing appeal against second respondent; dismissing appeal E against first respondent)
Per Ahmadi Asnawi JCA delivering the judgment of the court:

(1) The defence canvassed by the second respondent was not raised nor put to any of the prosecution witnesses, in particular PW5, rendering it to be a recent invention or afterthought. Being the crux of the second F respondent's defence, it is only to be expected that the said defence should feature prominently in the cross-examination of PW5. The second respondent's failure to do so had occasioned a breach of the rule of essential justice. Apart from springing surprises, it leaves no room for admission, rebuttal, denial or explanation by the aforesaid prosecution witnesses. The second respondent's testimony has no chance of being G tested and the prosecution was unable to check on whether the second respondent's version of the facts is true or false to avoid the imputation that the defence is a recent invention. (paras 43 & 46)

(2) The second respondent had also failed to put his defence to PW8, thus H denying access of the said defence from forensic scrutiny. PW8 would have been in position to verify the probability of such defence from the nature of the stab wound. In the circumstances, the second respondent's defence could not be tested nor subjected to a forensic verification exercise. Further, the stab wound suffered by the deceased is too deep and long for it to have been caused by accident. It could only have been I caused by an intentional stabbing where considerable force was applied. (paras 48 & 50)

(3) PW5's evidence in relation to the stabbing of the deceased by the second respondent is uncontroverted. Nevertheless, the trial judge opted to ignore his evidence but gave no reason for doing so, more so when the evidence of a principal witness is rejected. Additionally, the trial judge had clearly fallen into error in holding that PW5's evidence was not corroborated. However, under the law, there is no requirement for PW5's evidence to be corroborated. Any requirement for his evidence to be corroborated will conflict with s. 134 of the Evidence Act 1950. (paras 55 & 56)

(4) On a charge under s. 302 of the PC, the prosecution was to prove that the act of the second respondent in inflicting the injuries sustained by the deceased leading to her demise should come within the ambit of one or a combination in s. 300(a), (b), (c) or (d) of the PC. Upon the facts and evidence adduced, the provision of PC is most relevant. The second respondent aimed and stabbed the deceased at the most vulnerable and exposed part of the deceased's person, *ie* the centre of her chest. The depth of the stab wound alone denotes the force that was applied to inflict the injuries. Therefore, the stab wound inflicted upon the deceased by the second respondent were indeed intentional and it was inflicted with the intention of causing bodily injuries upon the deceased. (paras 57, 60 & 62)

(5) On the facts, the said injuries carried a high probability to cause death. Equally there can be no doubt that the said injuries are sufficient to cause death in the ordinary cause of nature. Once it is established that the second respondent intended the injuries that is sufficient in the ordinary course of nature to cause death, the act of the second respondent is murder within the ambit of s. 300(c) of the PC. The second respondent's defence is untenable in the light of the medical evidence that supported the uncontroverted testimony of PW5. It has neither raised a reasonable doubt upon the *prima facie* case finding of the trial judge against him on the original charge under s. 302 of the PC. In view of the second respondent's age at the time of the commission of the offence, the second respondent is ordered to be detained at the pleasure of His Majesty, the Sultan of Perak, in accordance with s. 97(1) and (2) of the Child Act 2001. (paras 63, 66, 67 & 68)

(6) There was nothing from the evidence of PW8 to suggest that the stab wound suffered by the deceased could have been caused by two persons in succession in the manner as described by PW5. Upon the totality of the evidence, there exist a lingering doubt of the role and complicity of the first respondent in the death of the deceased. The first respondent is verily entitled to benefit from the said doubt. Hence, the Public Prosecutor's appeal against the first respondent is dismissed and the order of discharged and acquittal by the High Court is affirmed. (paras 75-77)

A ***Bahasa Malaysia*** *Headnotes*

PW5 menerima suatu panggilan telefon berkaitan pergaduhan berhadapan rumah Kalarani ('si mati'). Di tempat kejadian, PW5 melihat responden kedua memegang sebilah parang. Kemudian PW5 melihat si mati berlari untuk menghalang parang yang dipegang oleh responden kedua daripada
B terkena sesiapa tetapi si mati ditikam oleh responden kedua dibahagian dada. Pada masa yang sama SP5 melihat responden pertama menghampiri mangsa dan terus menekan parang tersebut ke dada si mati. PW5 menegaskan bahawa responden pertama kemudiannya menarik parang itu dari dada si mati dan mengayunkan ke arahnya. Parang mengenai dan mencederakan ibu
C jari kanan PW5. Si mati meninggal dunia. Ahli patologi ('SP8') mengesahkan bahawa punca kematian si mati adalah disebabkan oleh luka tikaman di dada yang memutuskan organ toraks utama. Responden pertama sebelum ini dipertuduh di bawah s. 324 Kanun Keseksaan ('KK') kerana mencederakan PW5 manakala responden kedua dipertuduh di bawah s. 302 KK kerana
D menyebabkan kematian si mati. Pada masa melakuan kesalahan tersebut, responden kedua berusia 16 tahun dan empat bulan. Di akhir kes pendakwaan, responden pertama dipertuduhkan dengan tuduhan kedua di bawah s. 302 KK kerana menyebabkan kematian si mati, dibaca bersama s. 34 KK. Pertuduhan terhadap responden kedua dipinda bersama bagi
E membolehkan kemasukan s. 34 KK selari dengan pertuduhan kedua terhadap responden pertama. Hakim bicara mendapati pihak pendakwaan berjaya membuktikan kes *prima facie* terhadap responden-responden ke atas pertuduhan yang dikenakan dan memerintahkan responden-responden membela diri atas pertuduhan masing-masing. Responden kedua, dalam
F pembelaannya menghujahkan bahawa dia tidak berniat menikam si mati tetapi telah tergelincir dan hilang imbangan ketika bergaduh dan dalam proses itu, secara tidak sengaja menikam si mati di dadanya. Responden kedua juga berkata bahawa terdapat lebih 20 orang yang terlibat dalam pergaduhan tersebut. Responden kedua juga menegaskan bahawa responden pertama tidak berada di tempat kejadian apabila si mati ditikam dengan tidak
G sengaja. Di akhir kes pembelaan, responden pertama dilepas dan dibebaskan daripada kedua-dua pertuduhan yang dipertuduhkan terhadapnya. Sementara itu, responden kedua didapati bersalah dan disabitkan dengan pertuduhan yang lebih ringan di bawah s. 304(b) KK dan dijatuhkan hukuman enam tahun penjara. Oleh itu, pihak pendakwaan memfailkan rayuan berasingan
H terhadap keputusan tersebut. Timbalan Pendakwa Raya ('TPR') menghujahkan bahawa (i) versi pembelaan bahawa lebih daripada 20 orang terlibat dalam pergaduhan tesebut tidak dikemukakan atau diketengahkan kepada mana-mana saksi semasa kes pendakwaan; (ii) pembelaan responden kedua bahawa dia tidak berniat untuk menikam si mati tetapi tergelincir dan
I hilang imbangan dan secara tidak sengaja menikam si mati tidak dikemukakan, antara lain, kepada saksi-saksi pendakwaan, khususnya PW5; (iii) pembelaan responden pertama bahawa dia tidak berada di tempat kejadian pada masa si mati ditikam dan tidak terlibat dalam kecederaan yang

dialami oleh PW5 bercanggah dengan laporan polisnya sendiri; dan (iv) pembelaan kedua-dua responden hanyalah fikiran terkemudian dan penafian kosong semata-mata.

Diputuskan (membenarkan rayuan terhadap responden kedua; menolak rayuan terhadap responden pertama)
Oleh Ahmadi Asnawi HMR menyampaikan penghakiman mahkamah:

(1) Pembelaan yang dibangkitkan oleh responden kedua tidak dikemukakan ataupun dibentangkan kepada mana-mana saksi-saksi pendakwaan, khususnya PW5, menjadikannya satu rekaan atau fikiran terkemudian. Sebagai perkara utama pembelaan responden kedua, adalah dijangka bahawa pembelaan tersebut harus diberi penekanan utama dalam pemeriksaan balas PW5. Kegagalan responden kedua berbuat demikian telah menyebabkan pelanggaran pelaksanaan keadilan asasi. Selain daripada memberi kejutan, ia tidak memberikan ruang bagi kemasukan, bantahan, penafian atau penjelasan oleh saksi-saksi pendakwaan. Testimoni responden kedua tidak diberi peluang diuji dan pendakwaan tidak boleh memeriksa sama ada versi fakta responden kedua adalah benar atau palsu bagi mengelakkan tuduhan bahawa pembelaan adalah satu rekaan baru.

(2) Responden kedua juga gagal meletakkan pembelaan kepada PW8, dengan itu menafikan akses pembelaan tersebut daripada penelitian forensik. PW8 berada dalam kedudukan untuk mengesahkan kebarangkalian pembelaan sedemikian daripada luka tikaman. Dalam hal keadaan ini, pembelaan responden kedua tidak boleh diuji dan tidak tertakluk kepada latihan pengesahan forensik. Selanjutnya, luka tikaman yang dialami oleh si mati terlalu dalam untuk dianggap sebagai kemalangan. Ia hanya boleh disebabkan oleh tikaman secara sengaja di mana kekerasan digunakan.

(3) Keterangan PW5 berkenaan dengan tikaman si mati oleh responden kedua adalah tidak dipertikaikan. Namun demikian, hakim perbicaraan memilih untuk mengabaikan keterangannya tetapi tidak memberikan alasan dalam berbuat sedemikian, lebih-lebih lagi apabila keterangan saksi utama ditolak. Tambahan pula, hakim perbicaraan dengan jelas terkhilaf dalam memutuskan bahawa keterangan PW5 tidak disokong. Walau bagaimanapun, di bawah undang-undang, tiada keperluan bagi keterangan PW5 untuk disokong. Apa-apa keperluan bagi keterangannya disokong akan bercanggah dengan s. 134 Akta Keterangan 1950.

(4) Berkenaan pertuduhan di bawah s. 302 KK, pihak pendakwaan perlu membuktikan bahawa tindakan responden kedua dalam menyebabkan kecederaan yang dialami oleh si mati yang membawa kepada kematiannya sepatutnya berada dalam lingkungan satu atau kombinasi dalam s. 300(a), (b), (c) atau (d) KK. Apabila fakta dan keterangan dikemukakan, peruntukan KK adalah paling relevan. Responden kedua

menyasar dan menikam si mati di bahagian yang paling lemah dan terdedah iaitu tengah dadanya. Kedalaman luka tikaman sahaja menandakan kekerasan yang digunakan bagi mengakibatkan kecederaan. Oleh itu, luka tikaman yang dikenakan kepada si mati oleh responden kedua memang disengajakan dan bahawa ia dikenakan dengan niat untuk menyebabkan kecederaan kepada si mati.

(5) Mengikut fakta, kecederaan tersebut mempunyai kebarangkalian tinggi dalam menyebabkan kematian. Tidak syak juga bahawa kecederaan tersebut cukup untuk menyebabkan kematian dalam punca sifat biasa. Sebaik sahaja ia dibuktikan bahawa responden kedua meniatkan kecederaan yang mencukupi dalam menyebabkan kematian, pada punca sifat biasa, tindakan responden kedua ialah pembunuhan sepertimana termaktub dalam s. 300(c) KK. Pembelaan responden kedua tidak dapat dipertahankan mengikut keterangan perubatan yang menyokong testimoni PW5 yang tidak dapat dipertikaikan. Juga, ia tidak menimbulkan keraguan munasabah terhadap dapatan kes *prima facie* hakim perbicaraan terhadapnya atas pertuduhan asal di bawah s. 302 KK. Memandangkan umur responden kedua pada masa perlakuan kesalahan, responden kedua diperintahkan untuk ditahan di bawah perkenan Seri Paduka Baginda, Sultan Perak, mengikut s. 97(1) dan (2) Akta Kanak-kanak 2001.

(6) Tiada apa-apa dalam keterangan PW8 yang mencadangkan bahawa luka tikaman yang dialami si mati disebabkan oleh dua orang yang silih berganti sepertimana digambarkan oleh PW5. Pada keseluruhan keterangan, wujud satu keraguan mengenai peranan dan penglibatan responden pertama dalam kematian si mati. Responden pertama sesungguhnya berhak mendapat faedah dari keraguan tersebut. Maka, rayuan Pendakwa Raya terhadap responden pertama ditolak dan perintah untuk pelepasan dan pembebasan oleh Mahkamah Tinggi dikekalkan.

Case(s) referred to:
Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***
PP v. Visuvanathan [1977] 1 LNS 103 HC ***(refd)***

Legislation referred to:
Child Act 2001, s. 97(1), (2)(b)
Evidence Act 1950, s. 134
Penal Code, ss. 34, 300(a), (b), (c), (d), 302, 304(b), 324

Penal Code [Sing], s. 300(c)

For the appellant - Asmah Musa; DPP
For the 1st respondent - Mohd Fadhli Mat Sutris; M/s Badrul Munir Bukhari & Co
For the 2nd respondent - Hasnan Hamzah; M/s Hasnan Hamzah

Reported by Sandra Gabriel

JUDGMENT

Ahmadi Asnawi JCA:

[1] The two appeals were heard together. The respondent (Ramayah a/l Ramalu) in Criminal Appeal No. A-05-233-08-2014 is hereinafter referred to as the first respondent and the respondent (Nomalan a/l Ramayah) in Criminal Appeal No. A-05-279-10-2014 is henceforth referred to as the second respondent.

[2] In the court below, the cases against both the respondents were jointly tried. The first respondent was then referred to as the second accused and the second respondent was referred as the first accused.

[3] The first respondent is the father of the second respondent, who at the material time of the commission of the alleged offence, was 16 years and four months old.

[4] The first respondent was initially charged of committing an offence under s. 324 of the Penal Code (PC) for causing hurt to one Jivakumar a/l Karunagaran by means of a parang while the second respondent was charge of committing an offence under s. 302 of the same Code for causing the death of a female, one Kalarani a/p Vedi.

[5] At the end of the prosecution's case, the first respondent was levelled with a second charge under s. 302 of the PC for causing the death of the same female, read together with s. 34 of the same Code.

[6] The charge against the second respondent was correspondingly amended to provide for the insertion of s. 34 of the PC to run in tandem with the second charge against the first respondent.

[7] Hence, the two charges against the first respondent at end of the prosecution's case are as follows:

> First Charge:
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> Bahawa kamu pada 12.12.2009 jam lebih kurang 9.30 malam, di hadapan rumah No. 39, Taman Segari di dalam Daerah Manjong, di dalam Negeri Perak Darul Ridzuan telah dengan sengaja mendatangkan cedera ke atas lelaki India bernama Jivakumar a/l Karunagaran (No: KP: 870323008-5117) dengan menggunakan parang. Oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 324 Kanun Keseksaan.
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> Second Charge:
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> Bahawa kamu bersama-sama dengan Nomalan a/l Ramayah (No. KP: 930826-08-5145) pada 12hb. Disember 2009, jam lebih kurang 9.30 malam, di hadapan rumah nombor 39, Taman Segari, Segari, di dalam Daerah Manjong, di dalam Negeri Perak, dengan niat bersama telah melakukan

A suatu pembunuhan dengan menyebabkan kematian kepada Kalarani a/p Vedi (No. KP: 770621-08-7614). Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s. 302 Kanun Keseksaan dan dibaca bersama seksyen 34 Kanun Keseksaan.

[8] The amended charge against the second respondent is as follows:

B Bahawa kamu bersama-sama dengan Ramayah a/l Ramalu (No. KP: 650119-08-6185) pada 12hb. Disember 2009, jam lebih kurang 9.30 malam, di hadapan rumah nombor 39, Taman Segari, Segari, di dalam Daerah Manjong, di dalam Negeri Perak, dengan niat bersama telah melakukan suatu pembunuhan dengan menyebabkan kematian kepada Kalarani a/p Vedi (No. KP: 770621-08-7614). Oleh yang demikian, kamu telah
C melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan dan dibaca bersama seksyen 34, Kanun Keseksaan.

[9] At the end of the defence's case, the first respondent was acquitted and discharged of both the charges levelled against him.

D **[10]** Meanwhile, the second respondent was found guilty and convicted on a lesser charge under s. 304(b) of the PC as amended by the learned trial judge and was sentenced to six years imprisonment.

[11] The appeals before us by the Public Prosecutor were in respect of the said decisions.

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[12] We heard the appeals and after due consideration of the facts and issues raised, we dismissed the Public Prosecutor's appeal against both the orders of acquittal and discharged in respect of the first respondent.

[13] However, we allowed the Public Prosecutor's appeal in respect of the
F decision against the second respondent. We found him guilty on the original charge under s. 302 of the PC. In view of his age at the time of the commission of the offence, we ordered the second respondent to be detained at the pleasure of His Majesty, the Sultan of Perak, in accordance with s. 97(1) and (2)(b) of the Child Act 2001.

G **[14]** We now give our grounds.

The Case For The Prosecution

[15] Both the respondents stayed at No. 41, Taman Segari, Manjong, not far from the deceased's house (Kalarani a/p Vedi) at No. 44 of the same
H housing estate.

[16] On the evening of 12 December 2009, PW5 (Jivakumar a/l Karunagaran) was at a certain coffee shop at Taman Segari at Manjong. He was the deceased's nephew. At about 9.30pm, he received a telephone call from one Heeman, the deceased's son, of a fight in front of the deceased/
I Heeman's house. He rushed back to Heeman's house.

[17] Heeman has since died (on 4 September 2010) as indicated by his death certificate, exh. P-58, at Jilid 3, Rekod Rayuan ('RR'). A

[18] At the scene in front of Heeman's house, PW5 saw a fight between Heeman's family and the respondent's family. He also saw the second respondent having a parang with him. PW5 identified exh. P42A as the parang in question. B

[19] Then PW5 saw his aunty, the deceased, whom he called 'Helvi', running to prevent the parang (P42A) held by second respondent from hitting someone. Next he saw the deceased attempting to get hold of the said parang held by the second respondent. However, the deceased was stabbed by the second respondent on the centre of her chest. C

[20] PW5 then rushed towards the deceased in an attempt to save the deceased. He managed to detain the second respondent. He saw the said parang still sticking on the deceased's chest. At the same time SP5 saw the first respondent approaching the deceased and further thrusting the parang onto the deceased's chest. D

[21] PW5 added that the first respondent then pulled the said parang out of the deceased's chest and swung the same at him. The parang hit and injured his right thumb.

[22] PW5 then fled the scene for his life. He returned a few minutes later and with the help of his brother, one Santhiran, took the deceased to Hospital Seri Tanjong. By then the deceased had lost consciousness. The deceased subsequently died. E

[23] The pathologist, SP8 (Dr Rohayu binti Shahar Adnan) found and confirmed that the cause of the deceased's death was due to stab wound to the chest severing the major thoracic organs that resulted in blood exsanguinations leading to her demise. Her full report – Laporan Bedah Siasat – is exh. P24 at Jilid 3, RR. She testified, at p. 58, Jilid 1, RR, that: F

> Daripada pemeriksaan saya, kecederaan yang menyumbang kepada kematian si mati adalah kecederaan no. 5 di muka surat 3 P24, iaitu luka tikaman yang telah menembusi jantung sebelah kanan si mati termasuk pembuluh darah kedua-dua bahagian tengah paru-paru kanan dan kiri sehingga ke belakang rangka dada dengan kedalaman 22 cm. Ini adalah kerana luka tersebut telah mengenai bahagian kanan jantung termasuk salur darah yang mengakibatkan jantung tidak dapat berdegup dan kebocoran salur darah menyebabkan pendarahan yang banyak. G H
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> Kedua-dua keadaan itu membawa kepada kematian. Kecederaan-kecederaan itu boleh membawa kepada kematian. Punca kecederaan itu adalah luka tikaman kerana ia lebih dalam dari panjangnya. Kedalaman luka 22 cm dan panjang luka hanya 7.5 cm. I

[24] PW8 also testified that the said injuries could have been caused by a rather heavy sharp object, the like of a parang or a big chopper knife as it has cut through the deceased's fourth ribs.

[25] At the end of the prosecution's case, the learned trial judge found that the prosecution had established a *prima facie* case against the respondents on the charges proffered and ordered the respondents to enter their defence upon their respective charges.

[26] We were in agreement with the findings by the learned trial judge.

The Defence Case

[27] Both respondents testified on oath.

[28] The second respondent testified that there is a small river within the vicinity of the housing scheme.

[29] On the day in question, the second respondent saw Heeman (the deceased's son) with two others (Kalippa and Seenu) removing the wooden planks that the first respondent had stuck into the ground by the river banks, resulting in an altercation amongst them. The deceased and the first respondent then came to the scene. Soon after the altercation abated and the parties left for their respective homes.

[30] However, not long after the altercation at the river bank, Heeman came to the respondents' house where both the respondents, DW5 (Paaventhan a/l Ramayah) and PW12 (Loo Wan Jew) were resting and chit-chatting.

[31] The said Heeman stood in front of the respondents' house, armed with a piece of rattan. Heeman then went on to disparage and abuse them, employing vulgar language.

[32] The second respondent testified that he heard Heeman calling his uncle, one 'Apoi' through his mobile phone, requesting Apoi to come the scene. When Apoi arrived at the scene, the second respondent further heard Apoi calling his friends in three motorcars to come to the scene.

[33] The second respondent testified that the said Apoi took out a parang and directed the parang towards the first respondent. In response, the second respondent said that he kicked Apoi to prevent Apoi from harming the first respondent and tried to seize the parang from Apoi. In the midst of the melee, the deceased came in between them. The second respondent further testified that he did not intend to stab the deceased but had slipped/slided and lost his balance ('tergelincir') and in the process, had unintentionally/accidentally stabbed the deceased on her chest. The second respondent added that there were more than 20 people involved in the fight.

[34] The second respondent further testified that he was taken aback and got frightened. He pulled the parang from the deceased's chest and ran inside PW12's house. He saw the first respondent, SD5 and his mother already inside PW12's house. Then he surrendered the said parang to PW12.

[35] The second respondent also averred that the first respondent was not at the scene of the fight when the deceased was accidentally stabbed.

[36] At end of the defence, the learned trial judge accepted the testimonies of the defence witnesses and acquitted and discharged the first respondent of the two charges levelled against him. Meanwhile the learned trial judge amended the charge against the second respondent to one under s. 304(b) of the PC and found him guilty and stand convicted of the same. The second respondent was henceforth sentenced to a six years' imprisonment term.

The Appeal Before Us

[37] The Public Prosecutor's appeals were anchored upon the broad ground that in-so-far as the charges under s. 302 of the PC are concerned, the learned trial judge had erred in law and in fact when His Lordship found that the prosecution had failed to prove its case against both respondents beyond a reasonable doubt and thereafter caused the acquittal and discharged of both the respondents of the same.

[38] The learned Deputy Public Prosecutor ('DPP') submitted that the defence's version that more than 20 people were involved in the fight was not put or raised to any of the witnesses during the prosecution's case. Neither was the second respondent's defence that he did not intend to stab the deceased but had slipped and lost his balance ('tergelincir') and in the process had accidentally stabbed the deceased, ever put to the prosecution witnesses, in particular, PW5 and the investigating officer (PW4, ASP Muniandi a/l Paramichiuan).

[39] The learned DPP also submitted that the defence of the first respondent that he was not at the scene at the time the deceased was stabbed and was not involved in the injury sustained by PW5 was contradicted by his own police reports, exhs. P60 and P61.

[40] The learned DPP further submitted that both the respondents had contradicted each other in material particulars in their testimonies in court.

[41] Hence, the learned DPP submitted that the defence of both respondents were mere afterthought and bare denials without more.

Our Decision

The Appeal Against The Second Respondent

[42] The second respondent did not deny that he had stabbed the deceased on her chest but was adamant that it was an accidental act when he slipped in the melee and lost his balance and in the process had stabbed the deceased. This was solely the crux of his defence.

[43] However, we noted and were in agreement with the learned DPP that the said defence canvassed by the second respondent was not raised nor put to any of the prosecution witnesses, in particular PW5 and PW4, rendering it to be a recent invention or afterthought.

[44] The learned trial judge alluded to the same when he stated, at p. 16, Jilid 1, RR:

> Walau bagaimanapun, OKT1 mengakui bahawa dia telah menggunakan parang tersebut untuk menyerang balik lelaki yang memukulnya. Dalam keadaan sedemikian OKT1 sudah tentu mempunyai pengetahuan serangannya dengan parang pada masa si mati telah datang untuk masuk campur dalam pergaduhan mungkin mengakibatkan kematian pada si mati. Tindakan OKT1 termasuk di bawah peruntukan s. 304(b) Kanun Keseksaan. **Alasan bahawa dia 'tergelincir' jelas adalah pemikiran terkemudian oleh OKT1**. Oleh yang demikian adalah didapati bahawa OKT1 telah melakukan kesalahan dan disabitkan di bawah s. 304(b) Kanun Keseksaan … (emphasis added)

[45] It is apparent that the learned trial judge had found that the second respondent's defence to be an afterthought, but nevertheless accepted the same unequivocally and had acted upon it. However, His Lordship had failed to properly appraised the same, in particular, its reflection upon the credit worthiness of the second respondent's testimony and the weight to be accorded to such defence.

[46] We were of the view that being the crux of the second respondent's defence, it is only to be expected that the said defence should feature prominently in the cross-examination of PW5 and PW4. The second respondent's failure to do so had occasioned a breach of the rule of essential justice. Apart from springing surprises, it leaves no room for admission, rebuttal, denial or explanation by the aforesaid prosecution witnesses. The second respondent's testimony has no chance of being tested and the prosecution was unable to check on whether the second respondent's version of the facts is true or false to avoid the imputation that the defence is a recent invention - see *Alcontara Ambross Anthony v. PP* [1996] 1 CLJ 705; [1996] 1 MLJ 209.

[47] It is also incumbent upon the defence to put forth his case at the earliest reasonable opportunity. The second respondent paid no heed to the said age - old basic principle. Hence, as the second respondent's defence was revealed for the first time when he makes his defence from the witness box, thus it had detracted from the weight to be accorded to the said defence on account that it has been rendered to be a recent invention. The learned trial judge had failed to take into account this detracting factor in his appraisal of the second respondent's defence.

[48] The second respondent had also failed to put his defence of slipping, losing his balance and in the process had accidentally stabbed the deceased to PW8, the forensic pathologist, thus denying access of the said defence

from forensic scrutiny. PW8 would have been in position to verify the probability or otherwise of such defence from the nature of the stab wound, the angle of entry causing the stab wound, the depth and length of the wound, the weapon used to inflict the wound, the position of the second respondent at the time he inflicted the wound, the position of the deceased when the wound was inflicted upon her and other incidental matters thereto. She could even have re-enacted the scene of the stabbing incident according to the version of the second respondent for clarity and precision to the advantage of the second respondent's defence if given sufficient details by the second respondent. She may have even agree with the second respondent's version of the facts. As it were, none was raised by the second respondent to PW8. In fact PW8 was not cross-examined at all. Hence, the second respondent's defence could not be tested nor subjected to a forensic verification exercise.

[49] PW8 testified that the fourth injury at p. 3 of her post-mortem report (exh. P24) and seen in the photographs exh. P10(20) and (21) ie, subcutaneous bruising on the deltoid and wrist of the left upper limb each measured 1 x 1 and 7 x 5cm respectively, were in fact defensive wounds. She was not cross-examined on this issue though. Hence, it put paid to the second respondent's version that the fatal stab injury was occasioned accidentally. We surmised that the deceased was in fact attacked by the second respondent while using the said parang before the fatal injury was inflicted.

[50] We were further of the considered view that the stab wound suffered by the deceased is too deep and long (22 cm deep and 7.5 cm in length) for it to have been caused by accident in the version adduced by the second respondent. It could only have been caused by an intentional stabbing as testified by PW5 where considerable force was applied such that it cut through the sternum bone across the fourth ribs and fourth intercostal spaces as testified by PW8.

[51] The second respondent's testimony equally had suffered serious discrepancies. In the cross-examination of PW5, it was put to PW5 '… dalam pergelutan antara Heeman dan OKT1, si mati telah datang di tengah-tengah mereka dan dengan tidak sengaja parang terkena si mati …' to which PW5 disagreed. The issue of the second respondent slipping and losing his balance was not raised at all.

[52] The second respondent's caution statement (exh. D67) though was consistent with the cross-examination above:

> Saya menggunakan pisau itu untuk menyerang balik lelaki tersebut tetapi secara tiba-tiba seorang perempuan yang saya kenali dengan nama Kalairani telah menghalang saya dengan berada di tengah-tengah antara saya dengan lelaki itu menyebabkan pisau tersebut telah mengenai badannya. Perempuan itu tiba-tiba jatuh saya kemudiannya lari masuk ke dalam sebuah rumah milik seorang lelaki Cina…

[53] In court, as repeated a number of times, the second respondent testified that in the midst of the melee involving more than 20 people, the deceased came in between him and Apoi. He slipped and in the process had accidentally stabbed the deceased on her chest.

[54] There was no explanation by the second respondent to account for the discrepancies enumerated above. Neither did the learned trial judge address his mind to the same. Nevertheless, it illustrates the second respondent's propensity of changing his evidence as and when it suits him. The second respondent agreed though that PW5 was at the scene and could witness the incident.

[55] In our view, PW5's evidence in relation to the stabbing of the deceased by the second respondent is uncontroverted despite the barrage of cross-examination levelled against him. Nevertheless, the learned trial judge opted to ignore his evidence but gave no reason for doing so, an imperative exercise in the evaluation of witnesses, more so when the evidence of a principal witness is rejected.

[56] Additionally, the learned trial judge had clearly fallen into error when he said '… keterangan SP5 tidak ada keterangan sokongan oleh mana-mana saksi lain yang melihat tikaman oleh OKT1 terhadap si mati …' (at p. 16, Jilid 1, RR). However, under the law, there is no requirement for PW5's evidence to be corroborated. Any requirement for his evidence to be corroborated will conflict with s. 134 of the Evidence Act 1950, which provides that no particular number of witnesses shall be required for proof of any fact.

[57] On a charge under s. 302 of the PC, the imperative of the prosecution is to prove that the act of the second respondent in inflicting the injuries sustained by the deceased leading to her demise should come within the ambit of one or a combination thereof, of the situations envisaged by s. 300(a), (b), (c) or (d) of the Code. In our view, upon the facts and evidence adduced, the provision of s. 300(c) of the same is most relevant/applicable to gauge the act of the second respondent. The provision provides:

> 300. Murder.
>
> Except in the cases herein excepted, culpable homicide is murder –
>
> (a) ...
>
> (b) ...
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary cause of nature to cause death; or …

[58] In *PP v. Visuvanathan* [1977] 1 LNS 103; [1978] 1 MLJ 159, the Singapore Criminal Court of Appeal, opined as follows on the applicability of s. 300(c) of the Singapore Penal Code, which is in *pari materia* with our own s. 300(c) of the PC:

In our opinion cls. (a) and (c) of s. 300 are meant to cover different acts, ie, acts done with different intentions. The cases show that cl. (c) is meant to apply in circumstances where the assailant had no intention of causing death but has nevertheless intentionally (and not accidentally) inflicted a bodily injury sufficient in the ordinary course of nature to cause death. Under cl. (c) once the intention to cause the bodily injury actually found to be present is proved, the rest of the inquiry ceases to be subjective and becomes purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental. As was observed by Bose J in *Virsa Singh*'s at p. 476:

> It does not matter that there was no intention … to cause injury of a kind that is sufficient to cause death in the ordinary course of nature.

And at p. 161:

> ... the question, so far as the intention is concerned, is not whether he intended ... to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question.

The matter is clarified further by Hidayatullah J in *Rajwant Singh*'s case, *supre*, at p. 1878:

> If the injury the offender intends causing and does cause is sufficient to cause death in the ordinary course of nature, the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not ...

Further down the court ruled:

In our judgment for the application of cl. (c) of s. 300 of the Penal Code, all that the prosecution need to prove is:

(1) that the accused did an act which caused the death of the deceased;

(2) that the said act was done with the intention of causing bodily injury;

(3) that the injury caused:

(a) was intended and was not accidental or otherwise unintentional; and

(b) was sufficient in the ordinary course of nature to cause death.

There is no other requirement. In our opinion the submission of counsel for the defence based on Lord Diplock's *dictum* that 'the prosecution must also prove that the accused intended to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death' was untenable because such a requirement would make cl. (c) otiose in view of the provision of cl. (a).

[59] Now, what can be inferred from the act of the second respondent in all the circumstances of the case? The evidence of PW5 as stated earlier, is uncontroverted that the second respondent had stabbed the deceased when the deceased was attempting to get hold of the parang held by the second respondent so that no harm is caused to any person.

[60] The second respondent aimed and stabbed the deceased at the most vulnerable and exposed part of the deceased's person, ie, the centre of her chest that directly hit the most vital part of the human organ, the heart, as testified by PW8. The force he applied was considerable such that it cut through the sternum across the fourth ribs and the fourth intercostal space - see p. 3 of PW8's post-mortem report, exh. P24, for the full purport of the injuries sustained by the deceased. The depth of the stab wound alone which is about 22cm denotes the force that was applied to inflict the injuries. In consequence thereof the deceased had indeed suffered very serious injuries to her abdomen. Most importantly PW8 testified that '… saya cuma boleh katakan tempoh kematian adalah sejurus selepas tikaman …'.

[61] The deceased did not fight with the second respondent and has not done anything to endanger the second respondent's life or limb. Hence, there is no reason at all for the second respondent to stab the deceased in the manner he did.

[62] In such event, in our view the stab wound inflicted upon the deceased by the second respondent were indeed intentional and that it was inflicted with the intention of causing bodily injuries upon the deceased.

[63] Hence, the next issue is whether such injuries arising out of the stab wound suffered by the deceased were sufficient in the ordinary cause of nature to cause death. PW8 had testified that the injuries suffered by the deceased were indeed grave and serious. The details of the injuries arising out of the stab wound has been discussed at para. 23 above. On the facts, viewed objectively, there can be no doubt that the said injuries carried a high probability to cause death. Equally there can be no doubt that the said injuries are sufficient to cause death in the ordinary cause of nature. In fact PW8 testified that death was swift. It occurred soon after the stab wound was inflicted.

[64] In this regard it is immaterial whether the second respondent has the subjective knowledge of the consequence of inflicting such injuries upon the deceased or whether he has the knowledge that the injuries inflicted carried a high probability of causing the death of the deceased or whether he intended the direct consequence of causing those injuries upon the deceased.

[65] It does not also matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary cause of nature or whether the second respondent harboured an intention to cause the death of the accused at the material time or otherwise or that there is no knowledge that the act of the kind committed by him will be likely to cause death.

[66] Once it is established that the second respondent intended the injuries that is sufficient in the ordinary course of nature to cause death, the act of the second respondent is murder within the ambit of s. 300(c) of the PC. We do so opined without more.

[67] The second respondent's defence is untenable in the light of the medical evidence that supported the uncontroverted testimony of PW5. It has neither raise a reasonable doubt upon the *prima facie* case finding of the learned trial judge against him on the original charge under s. 302 of the PC.

[68] For all the reasons given, we allowed the Public Prosecutor's appeal against the second respondent. We found him guilty upon the original charge levelled against him under s. 302 of the PC. The High Court's conviction and sentence under s. 304(b) of the same Code is set aside. As said earlier, in view of the second respondent's age at the time of the commission of the offence, we ordered him to be detain at the pleasure of His Majesty, the Sultan of Perak, in accordance with s. 97(1) and (2) of the Child Act 2001.

The Appeal Against The First Appellant

[69] Learned TPR did not make any submission in respect of the first respondent's acquittal and discharged under the first charge (under s. 324 of the PC). Hence, the appeal is deemed to have been abandoned.

[70] As regard to the second charge (under s. 302 of the PC), the first respondent denied that he had further thrust the parang sticking on the deceased chest as testified by PW5. He said that he did not see the second respondent stabbing the deceased on her chest. There was a fight involving more than 15 people in front of his house. He was also assaulted with a parang on his head. He fled the scene for his life and took refuge at PW12's house together with his other son (DW5 – Paaventhan a/l Ramanah) and his wife. He did not know how the deceased was stabbed as at the material time he was no longer at the scene but seeking refuge at PW12's house.

[71] The second respondent testified that the first respondent was not involved in the stabbing of the deceased. He averred that after accidentally stabbing the deceased, he pulled the parang from the deceased's chest after the deceased fell down and ran inside PW12's house. He saw the first respondent already inside PW12's house together with his mother and brother, Paaventhan.

[72] The testimonies of both the respondents appeared to have been supported by the evidence of PW12. PW12 testified, at p. 69, Jilid 1, RR, that:

> Saya tidak nampak kenapa wanita itu terjatuh ke tanah. Dia jatuh di depan rumah saya. Lepas itu saya nampak OKT1 lari masuk ke dalam rumah saya. Yang datang dengan beberapa buah kereta berdiri di hadapan rumah saya. Pada masa itu saya belum kunci pintu pagar rumah saya. Saya nampak OKT1 memegang 1 pisau dengan tangan kanannya. Saya boleh

A camkan pisau yang OKT1 pegang. OKT1 menyerahkan pisau kepada saya dan suruh saya cucikan pisau itu. Pisau itu ada kesan darah. Saya ada mencuci pisau itu seperti disuruh oleh OKT1. Selepas mencuci pisau itu saya buangkan pisau itu di belakang rumah saya.

[73] From the sequence of the facts as witnessed by PW12, it appeared that
B moments after PW12 saw the deceased fell on the ground, PW12 saw the second respondent running into his house with the parang in his right hand.

[74] Hence, if it is true that the first respondent had further thrust the parang into the deceased's chest and then pulling it out as testified by PW5, then PW12 surely must have seen it. PW12 saw the deceased falling down
C but did not say anything about the first respondent being there too thrusting the parang further into the deceased's chest and then pulling it out. PW12 did not implicate the respondent with the stabbing of the deceased at all.

[75] There is nothing from the evidence of PW8 to suggest that the stab wound suffered by the deceased could have been caused by two persons in
D succession in the manner as described by PW5. PW8, at p. 59, Jilid 1, RR, merely said:

Berdasarkan pemeriksaan, ada sekali tikaman masuk dan keluar. Apabila objek tajam itu dicucuk masuk sekali, kemudian objek tajam itu dikeluarkan semula.

E

[76] Upon the totality of the evidence thrown at the first respondent, we opined that there exist a lingering doubt of the role and complicity of the first respondent in the death of the deceased. The first respondent is verily entitled to benefit from the said doubt.

F **[77]** Hence, we dismissed the Public Prosecutor's appeal against the first respondent and affirmed the acquittal and discharged of the first respondent on both the charges as ordered by the High Court.

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